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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
SCOTT JR, LEON

ART UNIT	PAPER NUMBER
2828	

DATE MAILED: 04/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	08/936,304	DONG, DAWEI	
	Examiner	Art Unit	
	Leon Scott, Jr.	2828	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 2/30/02 .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 6-13 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 6-13 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 18 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

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Applicant is hereby advised that due to discrepancies in the prior Office action the Examiner, in an attempt to make the record clear hereby provides a history of the rejections of record with appropriate commentary as follows:

Applicant *originally* filed a CIP of U.S. Patent No. 5,754,582 to Dong with the following set of five(5) claims:

(1) A laser system comprising:
a rotating shaft;
a motor operably coupled to the shaft
an upper case for mounting the rotating shaft; and
a module housing attached to the rotating shaft, the module housing having a mechanical axis and containing a laser projecting a non-collimated beam, wherein the mechanical axis axis and the center ray of the non-collimated beam are perpendicular to the rotating shaft.

(2)) A laser system comprising:
a stationary shaft;
an upper case for mounting the stationary shaft; and
a module housing attached to the stationary shaft, the module housing having a mechanical axis and containing a laser projecting a non-collimated beam, wherein the mechanical axis and the center ray if the non-collimated beam are perpendicular to the stationary shaft.

(3) A laser system comprising:
a oscillating shaft;
a motor operably coupled to the shaft
an upper case for mounting the oscillating shaft; and
a module housing attached to the oscillating shaft, the module housing having a mechanical axis and containing a laser projecting a non-collimated beam, wherein the mechanical axis and the center ray of the non-collimated beam are perpendicular to the oscillating shaft.

(4) The laser system of claim 1,2, or 3 wherein the module housing includes a plurality of laser diode modules.

(5) A laser system comprising:

a module housing, including
a rotating shaft;
a main shaft defining an axis of rotation, and
a plurality of cylindrical holes,
a case with a bearing to support the main shaft.
a motor coupled to the main shaft, and
a plurality of laser diode modules which generate a coherent light, wherein each laser diode modules is in one cylindrical hole of the module housing, wherein each laser diode module is adapted to project a laser beam along a center ray, and wherein each center ray is perpendicular to the axis of rotation.

After the first Rejection dated 3/04/99,(see paper #4) of these broad claims, applicant submitted a Response dated 9/06/99,(see paper #6) basically arguing the rejection without any changes to the language of the claims

After considering applicants arguments the examine made a second non-final Rejection dated 11/23/1999, (see paper # 7) to more precisely address the concerns of applicant. In response to the 11/23/1999 rejection applicant filed a Request for CPA, (see paper #11) and a pre-Amendment C, (see paper #12) canceling claims 1-5 and adding a new claim 6,(both filed on 8/23/2000). This amendment adding the new claim 6 introduced ***new matter*** into the claim(i.e. claim 6) as reflected by the Rejection dated 9/21/2000,(see paper #13).

On 12/28/2000 applicant filed Amendment D(see paper # 15) amending claim 6 and adding new claims 7-10 in response to the Rejection dated 9/21/2000.). In the ***FINAL*** Rejection dated 1/31/2001,(see paper #16) the following rejections were made:

After the FINAL Rejection dated 1/31/2001, (see paper # 16) applicant filed a RCE on 9/30/2001,(see paper #17):;and on 5/07/2001 applicant filed pre-Amendment E, (see paper #18) adding new claims 11-13 and amending claim 6. In regard to the amendment of claim 6, it is noted that a substantial portion of the amendment is merely a re-insertion of material that was deleted in the prior amendment (see paper's #15 and #18).

On 2/20/02 applicant filed Amendment F, (see paper # 21) to which the following Rejection is now being made:

Claims 6-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the preamble of all of claims 6-10 and 11-13 applicant *now* attempts to *change the scope of his invention* by inserting the word *level* after laser so that all claims are to *A laser level system.* In response to applicant's arguments, the recitation to: *A laser level system.* has not been given patentable weight because the recitation occurs in the preamble. Applicant is reminded that, a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim *does not* depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Further since no connective relationships have been recited in claim 6 between a laser level and the system components, claims 6-13 are indefinite and incomplete. Since no disclosure exist to support the recitation in line 3 of claim 6, it is not clear within the context of claim language how the motor is *adapted* to drive the shaft *more than 360 degrees* in a single direction;how much is *more* and how does one of ordinary skill determine this *undefined quantity*?, claim 6 is indefinite and incomplete. Likewise in line 4 of claim 13.how is the motor *adapted* to drive the shaft so that the first and second laser diodes produce the level *360 degree reference plane*; clearly to produce a *360 degree reference plane* some type of stop mechanism or control *must* be employed to stop the rotation at *360 degree,* what is the structure that accomplishes this result?, claim 13 is indefinite and incomplete. In lines 5 and 6 of claim 11 how is the laser diode contained in the housing connected to the shaft rotated in a single direction to produce the reference plane?, does the shaft rotate the diode in increments\, or is this achieved in some undisclosed manner?;claim 11 is indefinite and incomplete.

The amendments filed: 8/23/2000(see pre-Amendment C, paper #12); 12/28/2000(see Amendment D, paper #15); and 5/07/2001(see Amendment E, paper #18) were all objected to under 35 U.S.C. 132 because they introduced *new matter* into the specification. 35 U.S.C. 132 states that *no amendment* shall introduce new matter into the disclosure of the invention.

Claims 6-13 are rejected under 35 U.S.C. 112, first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There does not appear to be a written description of the claim limitations that:

a) the motor is: *"adapted to drive the shaft more than 360 degrees in a single direction"*(see lines 3 and 4 of claim 6).

Thus the added material which is not supported by the original disclosure is that the motor is: *"adapted to drive the shaft more than 360 degrees in a single direction"*; accordingly lines 3 and 4 of claim 6 constitute *new matter.*

b) the "laser diode is rotated in a single movement about a line perpendicular to the shaft until the reference plane is perpendicular with the rotating shaft."(see lines 4-6 of claim 11).

Thus the added material which is not supported by the original disclosure is that the "*laser diode is rotated in a single movement about a line perpendicular to the shaft until the reference plane is perpendicular with the rotating shaft.*"; *accordingly* lines 4-6 of claim 11 constitute new matter.

c) the :shaft being rotated so that the first and second laser diodes produce the level 360 degree reference plane"(see lines 9 and 10 of claim13).

Thus the added material which is not supported by the original disclosure is that the "*shaft being rotated so that the first and second laser diodes produce the level 360 degree reference plane*"; accordingly lines 9 and 10 of claim 13 constitute new matter.

Applicant is hereby advised that since claims 7-10 each depend from claim 6, and claim 12 depends from claim 11, these claims(7-10 and 12) are likewise rejected as in the above rejection of claims 6-13 as containing *new matter* disclosed in their respective parent claims.

In amended claim 11, In order for the *laser diode* to be: *rotated in a single movement about a line perpendicular with the shaft until the reference plane is perpendicular with the rotating plane* implies that the *motor coupled to rotate the* shaft and thereby the laser diode in the housing extending from the shaft would have to *drive the shaft more than 360 degrees in a single direction.* Applicant is advised that it is not clear that: the *motor coupled to rotate the shaft* and thereby the *laser diode in a single movement about a line perpendicular with the shaft until the reference plane is perpendicular with the rotating plane* can be achieved since the *underlying disclosure* to

support that position *has not* been shown to exist. Further, as above, if the shaft is driven "*more than 360 degrees*", this would suggest that some type of stop mechanism or control is used to stop the shaft at some undefined (i.e. *more*) position *more than 360 degrees*, clearly no structure has been recited to accomplish this desired result. Further, if no such control or stop mechanism has been disclosed, then one would be lead to believe that the diode would rotate in such a fashion that the projected beam would reach an operator or customer. Applicant is advised that it is not clear that: the *motor coupled to rotate the shaft* and thereby the *laser diode in a single movement about a line perpendicular with the shaft until the reference plane is perpendicular with the rotating plane* can not be achieved since the underlying disclosure to support that position *has not* been shown to exist.

Thus the added material which is not supported by the original disclosure is that *the "laser diode is rotated in a single movement about a line perpendicular with the shaft until the reference plane is perpendicular with the rotating plane."* accordingly lines 6-8 of claim 11 constitute *new matter*

To once again insure that applicant is given due consideration in this regard the Examiner has repeatedly *requested* applicant to point out where in the specification *support* for this *exact* recitation can be found. The request is not complicated, yet Applicant has sought to re-interpret the specification in an attempt to provide a back-door support for this recitation. Given the prosecution history, it is the position of the examiner that such support does not exist.

In amended claim 13, There does not appear to be a written description of the claim limitation that the motor is coupled to " *the shaft being rotated so that the first and second laser diodes produce the level 360 degree reference plane.*"(see lines 8 and 9 of claim 13). Applicant is advised that since no disclosure has been shown to exist which supports the position that the *motor is adapted to drive the shaft more than 360 degrees in a single direction;* thus if the shaft is to be rotated to produce the claimed desired result, the laser diodes would have to be disposed in a position diametrically opposed to each other on opposite sides of the shaft each rotating a minimum of 180 degrees to produce the level 360 degree reference plane. It is not clear that such disclosure of the positioning of the laser diodes and the motor rotating the shaft relative to the diode positions exist.

Thus the added material which is not supported by the *original disclosure is that the: "the shaft being rotated so that the first and second laser diodes produce the level 360 degree reference plane."; accordingly* lines 8 and 9 of claim 13 constitute new matter. Further it is noted that the recitation in the preamble of: *"A laser level system for producing a level 360 degree reference plane"*, has not been given any patentable weight.

To once again insure that applicant is given due consideration in this regard the Examiner has repeatedly *requested* applicant to point out where in the specification *support* for this *exact* recitation can be found. The request is not complicated, yet Applicant has sought to re-interpret the specification in an attempt to provide a back-door support for this recitation. Given the prosecution history, it is the position of the examiner that such support does not exist.

Applicant has submitted a declaration by Mr. Jerry Teng purportedly attesting to what one of ordinary skill in the art would consider disclosed by the application as *originally filed.* In regards to applicant's attempt to give some measure of creditability to his position by using the declaration of Mr. Jerry Teng it is pointed out to applicant that a declaration(/affidavit) *can not be used to argue or interpret the claim language and/or the specification* where the recitation is to a precise or specific limitation not subject to interpretation, The question of support still persists. The declaration(/affidavit) has been considered but *is not sufficient to overcome or remove the rejections of record.* Further applicants comments at the bottom of p.5 and on p. 6 *do not* serve to support a position which, at best, Is a matter of interpretation no more viable than that indicated by the Examiners in the rejection of claim 6 under 35 U.S.C. 112, first paragraph (see Rejection dated 12/28/2000,(paper #15)).

Applicant stated in his response to the holding of *new matter* in a previous rejection that, "*Since the free wheel 32 is attached to the main shaft 37 , the shaft 37 travels many rpm, and clearly more than 360 degrees*"

(a) This *conclusion* that *the shaft 37 travels many rpm, and clearly more than 360 degrees* constitutes nothing more than an attempt to justify a lack of disclosure. Indeed the plane of laser light generated by the level could readily be achieved by rotating the laser level in, for example 90 or 180 degree increments in one direction to produce the plane of light. Of course this is speculation on the part of the examiner, just as applicants position is speculation; however, although both positions may be viable nothing has been *disclosed* in applicants specification which would support applicant's position over that of the examiners. Further if the shaft is driven "*more than 360 degrees*", this would suggest that some type of stop mechanism or control is used to stop the shaft at a position more than 360 degrees, clearly no structure has been recited to accomplish this desired result. Further, If no such control or stop mechanism is present then one would be lead to believe that the diode would rotate in such a fashion that the projected beam would reach an operator or customer.

Applicant is hereby advised that the rejection of claim 6 , insofar as definite under 35 U.S.C. 102(b) as *anticipated* by or, in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Kirchever et al('120) or over Kirchever et al('948) ,both as applied in the previous rejection of claim 6 (see rejection dated 09/21/00 and repeated in paper #20) has been withdrawn; however should applicant delete the *new matter* in the claims the rejection will be *re-instated*.

Further, as to Applicant's purported point of novelty, it is clear that when the *new matter is removed from the claims* and using fig. 1A, the exit laser beam and a mechanical axis of the housing are perpendicular to the shaft(22). The motor coupled to the shaft in line 3 of claim 6 would be *inherent* in the device since the only shaft claimed is the main shaft which must be coupled to the motor if it(the main shaft) is to rotate. Likewise since the center ray of the laser beam and a mechanical axis of the module housing perpendicular to the rotating shaft .is met by the references in that clearly a mechanical axis of the housing, which is not limited by the language of the claims, can be virtually any axis including an axis perpendicular to the center ray of the beam and the rotating shaft... Applicant's device is obvious. Again it is pointed out to Applicant that the use("application") of the laser system of the prior art is not at issue , indeed the prior art laser system could be used in almost any apparatus and still be a reference against applicant's claims. Further it is pointed out that: (a) ..under section 103, not only are the teachings of the prior art taken into consideration, but also the level of ordinary skill in the pertinent art.(see In re Luck, 177 USPQ 523); and (b) ...it is well settled that the test of obviousness is not whether the features of one reference can be bodily incorporated into the structure of another, and proper inquiry should not be limited to the specific structure shown by the references, but should be into the concepts fairly contained therein, and the overriding question to be determined is whether those concepts would suggest to one skilled in the art the modifications called for by the claims.(see In re Van Beckum et al, 169 USPQ 47). When one considers these points of law along with a careful comparison and review of the art of record, it is clear that Applicant's device is obvious.

The non-statutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761

(CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U. S. Patent No. 5,754,582. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 3 of the patent substantially recites the subject matter of claim 6 of the application as follows: ..

Patent Serial No. 5,754,582	Application Serial No. 08/936,304
Claim 3: A laser system comprising a module housing including: main shaft defining an axis of rotation and a cylindrical hole with a center axis which lies in a plane perpendicular to the axis of rotation; a case with a bearing to support the main shaft , wherein the main shaft is in the bearing; a motor wherein the motor is coupled to the main shaft; and a rotatable laser diode module which generates coherent light, wherein the rotatable laser diode module is in the cylindrical hole of the module housing, wherein the rotatable laser diode module projects a laser beam along a	Claim 6 (Amended): A laser level system comprising: a rotating shaft; a motor coupled to the shaft adapted to drive the shaft more than 360 degrees in a single direction; an upper case rotatably supporting the rotating shaft; and a module housing attached to the rotating shaft, the module housing containing a laser diode projecting a beam having a center ray. wherein the center ray of the beam is perpendicular to the rotating shaft.000...

center ray, wherein the center ray of the laser beam and the center axis define an angle Θ and wherein the angle Θ lies within the plane which is perpendicular to the axis of rotation of the main shaft.	

Claims 11 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U. S. Patent No. 5,754,582. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 3 of the patent substantially recites the subject matter of claim 6 of the application as follows:

Patent Serial No. 5,754,582	Application Serial No. 08/936,304
Claim 3: A laser system comprising a module housing including: main shaft defining an axis of rotation and a cylindrical hole with a center axis which lies in a plane perpendicular to the axis of rotation; a case with a bearing to support the main shaft , wherein the main shaft is in the bearing; a motor wherein the motor is coupled to the main shaft; and a rotatable laser diode module which generates coherent light, wherein the rotatable laser diode module is in the cylindrical hole of the module housing, wherein the rotatable laser diode module projects a laser beam along a center ray, wherein the center ray of the laser beam and the center axis define an angle Θ	Claim 11 (New): A laser level system comprising: a shaft; a motor coupled to rotate the shaft; a case rotatably supporting the rotating shaft; and a module housing extending from the shaft and containing a laser diode for projecting a laser beam to produce a reference plane, wherein the laser diode is rotated rotated in a single movement about a line perpendicular with the shaft until the reference plane is perpendicular with the rotating shaft.

and wherein the angle Θ lies within the plane which is perpendicular to the axis of rotation of the main shaft.	

When one compares the claims of the patent with those of the application it is clear that:

a) The *motot coupled to the shaft adapted to drive the shaft more than* 360 *degrees in a single direction* is *inherent* in the device of the patent claims, provided support for said recitation exist in applicant's specification.

b) The addition of the term *level* to the preamble of the application claims does not distinguish the claims of the application over those of the patent since the preamble of the application claims can not nor have been given any patentable weight.

The IDS submitted by applicant dated 5/07/01 *has not been considered* since:

a) no references were received by the Office, and

b) no statement of pertinence of the references was received; accordingly, the IDS is improper.

Applicant's arguments filed 2/20/02 have been fully considered but they are not persuasive.

In applicant's response to the Rejection dated 11/6/01, (see paper # 20)) applicant states on p. 4 of his remarks:

"With regard to page 2 paragraph no. 1, the Examiner objected to the amendment filed on September 30, 2001 under 35 USC § 132 because it allegedly introduces new matter in the specification. Applicant respectfully traverses such objection as Applicant did not file an amendment on such date. Accordingly, Applicant respectfully request the objection be withdrawn.

In particular, the Examiner alleges that there does not appear to be support in the specification for the claimed element that the motor be "*adapted to drive the shaft more than 360 degrees in a single direction*" in lines 3-4 of claim 6/ Accordingly, the Examiner asserts that adding this recitation is new matter and applicant needs "to point where in the specification support for this exact recitation can be found.

Under the MPEP, the standard for determining compliance with the written description requirement is "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed. "MPEP § 2163.01 (*quoting in re Gostell,* 872 F.2d 1008, 1012

(Fed. Cir 1989)). Contrary to the Examiner's allegations the "subject matter of the claim need not be described literally (i.e., using the same terms or *in haec veba)* in order for the disclosure to satisfy the description requirement_MPEP §2163.01." Applicant then proceeds to attempt to give some measure of creditability to his position by using the declaration of Mr. Jerry Teng and U.S. Patent No. 5,754,582 to Dong, issued by the Examiner of record."

First, In regard to applicant's comments concerning the objection to the amendment filed on September 30, 2001 under 35 USC § 132 because it introduces new matter in the specification,

Applicant states:

"Applicant respectfully traverses such objection as Applicant did not file an amendment on such date accordingly Applicant respectfully request the objection be withdrawn."

Is applicant suggesting by these comments that the rejection is *invalid because the date is incorrect*? It is pointed out to applicant that where there is some *uncertainty* or *disagreement* as to material in a rejection (in this case the accuracy of the filing of his amendment i.e. August 23, 2000 as opposed to September 30, 2001); it is incumbent upon the applicant to determine the accuracy of the material or call the Examiner to request clarification. This assertion by applicant is tantamount to suggesting that because applicant did not supply a copy of the references with statements of relevance that the IDS filed 5/07/01 should have been entered and considered. Since applicant made no attempt, on or off the record to clarify or determine the accuracy of the date, but rather chose to summarily dismiss the rejection, it remains in force and is herein repeated, as above.

The comments abridging pp. 5-10 of applicant's remarks are viewed as an attempt to negate the rejections of record, and since the examiner's positions, on the record, are clear with respect to problems in the application; no further discussion or comment is deemed necessary.

Finally it is pointed out to applicant that *originally filed claims(i.e. claims 1-5),* were filed as a C-I-P. It is not clear, on the record what the *in-part new matter* added to those *originally filed* claims(i.e. claims 1-5) was. Thus. since new claim 6 was added *after the initial filing of claims 1-5*, it is clear that the material of claim 6 *was not part* of the *original in-part new matter*. After a careful review of the claims and prosecution history of this application(09/936,304), it would appear that an *improper* back-door attempt is being made to force the Office to enter the *new matter* contained in independent claims 6,11,and 13 and thereby in all of claims 6-13, not originally filed or supported in the specification.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leon Scott, Jr. whose telephone number is 703-308-4884. The examiner can normally be reached on Monday - Friday, 6:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul P. Ip can be reached on (703)308-3098. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7721 for regular communications and 703-308-2864 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-3431.

Leon Scott, Jr.
Primary Examiner

Leon Scott, Jr.
Primary Examiner
Art Unit 2828

lsjr
April 20, 2002